In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-6

HAROLD DURKEE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petiioner contends that the evidence of an effect on interstate commerce was insufficient to sustain his conviction.

Following a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted of extortion and conspiracy to commit extortion, in violation of the Hobbs Act, 18 U.S.C. 1951.* He was sentenced to concurrent terms of nine months' imprisonment. The court of appeals affirmed (Pet. App. A).

*Michael McCarthy and Ronald Uginchus were convicted with petitioner of extortion and conspiracy to commit extortion. Their convictions also were affirmed on appeal (Pet. App. A), but they have not joined in the present petition.

The evidence showed that petitioner and several other members of the Chicago Police Department arranged for James Bodie to sell a stolen camera lens to William Leverence so that they could extort money from Leverence (Tr. 10-15, 108). On September 10, 1973, Bodie went to Leverence's jewelry store and sold the lens to Leverence (Tr. 24-30, 638-639). Shortly thereafter, petitioner and the other officers arrived and informed Leverence that the lens was stolen (Tr. 31, 641-642). Petitioner told Leverence that he was under arrest, but that for $1,000, he and the other officers would "forget about it" (Tr. 645-646, 679). After some negotiation, Leverence gave petitioner $350 in cash from the safe in Leverence's office (Tr. 34, 646-655).

At petitioner's trial, it was stipulated that Leverence's jewelry store, located in Chicago, purchased some jewelry from local suppliers who obtained their jewelry from sources outside Illinois. Leverence testified that he purchased additional jewelry directly from suppliers in New York (Tr. 636). Leverence also admitted purchasing marijuana and stolen property for resale (Tr. 10, 30, 78, 83, 153, 635, 684-691).

Petitioner contends that there was insufficient evidence that the extortion affected interstate commerce because the evidence was insufficient to show that Leverence had obtained the $350, which was extorted from him, from legal activities or that Leverence would have used the extorted money to make legal purchases of jewelry from interstate commerce. Viewed in the light most favorable to the government, there was ample evidence at trial from which the jury reasonably could have concluded that the $350 extorted from Leverence deprived him of part of the assets he needed for legitimate purchases of jewelry from interstate commerce. See *Glasser* v. *United States*, 315 U.S. 60, 80. Whether the $350 was obtained legally

by Leverence is irrelevant since the extortion deprived him of assets with which to conduct his legitimate jewelry business. Accordingly, as the court below held, the evidence was sufficient to establish the requisite effect on interstate commerce (Pet. App. 3). *United States* v. *Gill,* 490 F.2d 233, 237 (C.A. 7), certiorari denied, 417 U.S. 968; *United States* v. *De Met,* 486 F.2d 816, 821-822 (C.A. 7), certiorari denied, 416 U.S. 969.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

AUGUST 1975.